

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

TERRANCE JOE QUINLAN,

Plaintiff,

v.

JOHN CONATY,

Defendant.

CASE NO. 2:21-cv-00991-TSZ-JRC

ORDER DENYING  
APPOINTMENT OF COUNSEL

This matter is before the Court on referral from the district court and on plaintiff's motion to appoint counsel. *See* Dkt. 62.

There is no constitutional right to appointed counsel in a § 1983 civil action. *See Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). However, in “exceptional circumstances,” a district court may appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1) (formerly 28 U.S.C. § 1915(d)). *Rand v. Roland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *overruled on other grounds*, 154 F.3d 952 (9th Cir. 1998). To decide whether exceptional circumstances exist, the Court must evaluate both “the likelihood of success on the merits [and] the ability of

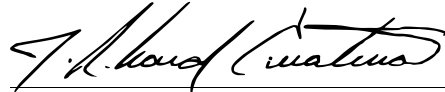
1 the [plaintiff] to articulate his claims *pro se* in light of the complexity of the legal issues  
2 involved.” *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (quoting *Weygandt v.*  
3 *Look*, 718 F.2d 952, 954 (9th Cir. 1983)). A plaintiff must plead facts showing he has an  
4 insufficient grasp of his case or the legal issues involved and an inadequate ability to articulate  
5 the factual basis of his claims. *See Agyeman v. Corrections Corp. of America*, 390 F.3d 1101,  
6 1103 (9th Cir. 2004).

7 In support of his motion to appoint counsel, plaintiff lists barriers that are common to *pro*  
8 *se* prisoners. For example, he states that he is unable to afford counsel despite repeated attempts,  
9 that his imprisonment will greatly limit his ability to litigate, and that having an attorney will  
10 “better enable plaintiff to present evidence and cross examine witnesses.” Dkt. 62 at 2.  
11 Unfortunately, because these barriers are common, they are not considered exceptional  
12 circumstances that warrant the appointment of counsel. *See Siglar v. Hopkins*, 822 Fed. App’x  
13 610, 612 (9th Cir. 2020) (denying appointment of counsel because plaintiff’s “circumstances  
14 were not exceptionally different from the majority of the challenges faced by *pro se* litigants)  
15 (citations omitted); *see also Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (holding that  
16 limitations in plaintiff’s ability to prepare for trial due to his imprisonment were not exceptional  
17 circumstances to appoint counsel). There may come a time when the courts or Congress will  
18 recognize that these conditions compel the appointment of counsel without charge. But we are  
19 not there yet. Therefore, the law says these conditions, alone, do not compel this Court to appoint  
20 *pro bono* counsel.

21 Also, plaintiff has not established a likelihood of success on the merits. The Court  
22 recently recommended that the district court grant defendant’s motion to dismiss and dismiss  
23 plaintiff’s claims with prejudice because plaintiff cannot proceed with a *Bivens* claim against  
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1 defendant after recent Supreme Court and Ninth Circuit opinions. *See* Dkt. 71. Accordingly,  
2 plaintiff's motion to appoint counsel is denied.

3 Dated this 22nd day of November, 2022.

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5 J. Richard Creatura  
6 Chief United States Magistrate Judge  
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